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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,950	03/15/2001	Rodney Senior	13620	3634
293	7590	10/19/2004	EXAMINER	
DOWELL & DOWELL PC 2111 Eisenhower Ave. Suite 406 Alexandria, VA 22314			RHODE JR, ROBERT E	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/805,950	SENIOR, RODNEY <i>50</i>
Examiner	Art Unit	
Rob Rhode	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 August 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 6-23 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 6-23 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 03 August 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

DETAILED ACTION

Response to Amendment

Applicant amendment of 8-3-04 canceled claims 1 – 5 and added new claims 6 - 23.

Currently, claims 6- 23 are pending.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

In Claims 1 - 12, the claimed invention is directed to non-statutory subject matter. The claim is directed to a process that does nothing more than manipulate an abstract idea. There is no practical application in the technological arts. See *In re Musgrave*, 167 USPQ 280 (CCPA 1970) and *In re Johnston*, 183 USPQ 172 (CCPA 1974). For example in claim 1, the invention in the body of the claim does not recite the use of nor incorporate any technology in carrying out the recited method steps and therefore is not statutory. If the invention in the body of the claim is not tied to the technological arts, environment or machine, the claim is not statutory. See *Ex parte Bowman*, 61 USPQ2d 1665, 1671 (BD. Pat. App. & Inter. 2001) [Unpublished] and note MPEP 2106 IV 2(b). While Bowman is not precedential, it has been cited for its analysis.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 – 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholson (US 6,778,967 B1) in view of Chen (US 6,741,969 B1) and further in view of Deaton (US 6,611,811 B1).

Regarding claim 6 and related claims 12, 13 and 23 (new), Nicholson teaches a method and system of transacting the purchase of a commodity, which comprises the steps of:

- a) purchasing a quantity of a given commodity at a purchase time price on a deferred redemption basis and providing a quantity credit account of said commodity (see at least Abstract, Col 4, lines 4 – 11 and Figures 6, 7A & B)
- b) separating said quantity credit account into discrete purchase blocks, each block representing a different purchase made at a certain purchase time price (see at least Col 5, lines 1 - 9),
- c) storing data for the quantity credit account in an accessible format (see at least Col 5, lines 1 – 9 and 19 - 24),

d) subsequently accessing said stored quantity credit account data in order to redeem a part of the quantity credit account for said commodity in physical form (Col 5, lines 24 – 29).

While Nicholson discloses storing and processing by credit account in order to redeem a part of the quantity credit, the reference does not specifically disclose and teach

e) arranging for said redemption to deplete the earliest of said purchase blocks first until the block is expended, followed by depletion of the next earliest purchase block until it is expended, the step continuing until the latest purchase block is expended.

On the other hand, Chen in the same area of transacting the purchase of a commodity teaches a method and system of (e) arranging for said redemption to deplete the earliest of said purchase blocks first until the block is expended, followed by depletion of the next earliest purchase block until it is expended, the step continuing until the latest purchase block is expended (see at least Abstract, Col 18, lines 14 – 19 and Col 19, lines 50 – 53).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the method and system of Nicholson with the method of Chen to have enabled a method and system of transacting the purchase of a commodity, which comprises the steps of: a) purchasing a quantity of a given commodity at a purchase time price on a deferred redemption basis and providing a quantity credit account of

said commodity, b) separating said quantity credit account into discrete purchase blocks, each block representing a different purchase made at a certain purchase time price, c) storing data for the quantity credit account in an accessible format, d) subsequently accessing said stored quantity credit account data in order to redeem a part of the quantity credit account for said commodity in physical form – in order to provide the customer redemption of a quantity of a commodity purchased. Nicholson discloses a method and system of transacting the purchase of a commodity, which comprises the steps of: a) purchasing a quantity of a given commodity at a purchase time price on a deferred redemption basis and providing a quantity credit account of said commodity, b) separating said quantity credit account into discrete purchase blocks, each block representing a different purchase made at a certain purchase time price, c) storing data for the quantity credit account in an accessible format, d) subsequently accessing said stored quantity credit account data in order to redeem a part of the quantity credit account for said commodity in physical form (Abstract, Col 4, lines 4 – 11 and Figures 6, 7A & B). Chen discloses a method and system of (e) arranging for said redemption to deplete the earliest of said purchase blocks first until the block is expended, followed by depletion of the next earliest purchase block until it is expended, the step continuing until the latest purchase block is expended (see at least Abstract, Col 18, lines 14 – 19 and Col 19, lines 50 – 53). Therefore, one of ordinary skill in the art would have been motivated to extend the method and system of Nicholson with a method and system of (e) arranging for said redemption to deplete the earliest of said purchase blocks first until the block is expended, followed by depletion of

the next earliest purchase block until it is expended, the step continuing until the latest purchase block is expended. In this regard, the customer will have the credit for a quantity of commodity purchased as well as depleting the account quantity/price by the earliest purchase, which will increase customer satisfaction. With this increase in customer satisfaction, the probability will be increased that customer will return in the future for additional purchases.

The combination of Nicholson and Chen substantially disclose and teach the applicant's invention.

While the providing of a weighted average is implicit in the both the Nicholson and Chen references, the references do not specifically disclose and teach a method and system of f) combining data in said purchase blocks to provide a weighted average purchase value of said quantity credit account.

On the other hand and in the same area for a method and system of transacting the purchase of a commodity, Deaton teaches a method and system of f) combining data in said purchase blocks to provide a weighted average purchase value of said quantity credit account (see at least Abstract and Col 69, lines 44 – 47).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the combination of Nicholson and Chen with the method and system of

Deaton to have enabled a method and system of f) combining data in said purchase blocks to provide a weighted average purchase value of said quantity credit account.

The combination of Nicholson and Chen discloses a method and system of transacting the purchase of a commodity, which comprises the steps of: a) purchasing a quantity of a given commodity at a purchase time price on a deferred redemption basis and providing a quantity credit account of said commodity, b) separating said quantity credit account into discrete purchase blocks, each block representing a different purchase made at a certain purchase time price, c) storing data for the quantity credit account in an accessible format, d) subsequently accessing said stored quantity credit account data in order to redeem a part of the quantity credit account for said commodity in physical form. Deaton discloses a method and system of f) combining data in said purchase blocks to provide a weighted average purchase value of said quantity credit account (see at least Abstract and Col 69, lines 44 – 47). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the combination of Nicholson and Chen with a method and system of f) combining data in said purchase blocks to provide a weighted average purchase value of said quantity credit account.

Regarding claim 7(new), Nicholson teaches a method wherein the redeeming step is repeated until the whole quantity of the purchased commodity is redeemed (Figure 1).

Regarding claim 8 (new), Nicholson teaches a method wherein the redeeming steps are performed at various locations (Figure 7B).

Regarding claim 9 and related claim 14 (new), Nicholson teaches a method wherein the quantity is a bulk quantity (Col 5, lines 6 -7).

Regarding claim 10 (new), Nicholson teaches a method wherein the purchasing and redeeming steps are performed by electronic means (Abstract and Figure 6).

Regarding claim 11 (new), Nicholson teaches a method wherein the commodity is a branded commodity and the purchasing and redeeming steps are effected with a same brand of the commodity (Col 1, lines 38 – 39). Please note that Nicholson does not specifically disclose a branded commodity. However, Nicholson does disclose fuel service stations. In that regard, it would have been obvious to one of ordinary skill to extend the method and system of Nicholson with a well known brand such as ExxonMobil and thereby have branded name.

Regarding claim 15, (new), Nicholson teaches a system wherein the purchasing module is a computer server, which is connected to a database (Figure 6).

Regarding claim 16 (new), Nicholson teaches a system wherein the database comprises commodity description and pricing information (Figures 6 and 7B).

Regarding claim 17 (new), Nicholson teaches a system, adapted to be accessible via an Internet browser (Figure 6).

Regarding claim 18 (new), the recitation that “adapted to be accessible via a point-of-sale terminal”, such recitation is given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other “accessible” already disclosed by Nicholson.

Regarding claim 19 (new), Nicholson teaches a system further comprising means for storing quantity credit account data. (Col 5, lines 6 – 9 and Figure 6).

Regarding claim 20 (new), Nicholson teaches a system wherein quantity credit account data is stored in the database (Col 5, lines 6 – 9 and Figure 6).

Regarding claim 21 (new), Nicholson teaches a system wherein the commodity purchasing module comprises or is operable in conjunction with a personalized access device (Figure 2).

Regarding claim 22 (new), the recitation that “wherein the personalized access device is a magnetic memory device”, such recitation is given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the

instant invention from the other “personalized access device” already disclosed by Nicholson.

Response to Arguments

Applicant's arguments with respect to claims 6 - 23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Rob Rhode** whose telephone number is **(703) 305-8230**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(703) 308-1344**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 308-1113**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

(703) 872-9306 [Official communications; including

After Final communications labeled

"Box AF"]

(703) 746-7418 [Informal/Draft communications, labeled

"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.

RER



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